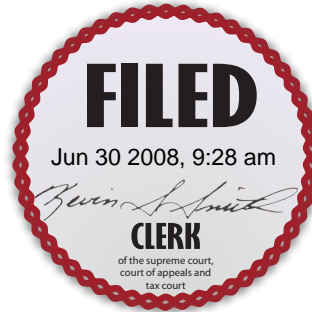


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
M.L.H., A.M.H. and S.L.H., Minor Children,)

and)

SCOTT H., Father, and CHARLENE H., Mother,)

Appellants-Respondents,)

vs.)

ALLEN COUNTY DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 02A03-0802-JV-63

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause Nos. 02D07-0405-JT-72, 02D07-0405-JT-73, 02D07-0405-JT-74

June 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Scott H. (“Father”) appeals the involuntary termination of his parental rights to his children, M.H., A.H., and S.H. Concluding the trial court’s judgment is supported by clear and convincing evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

M.H. was born September 14, 2000, A.H. was born August 22, 2001, and S.H. was born October 21, 2002. On February 6, 2003, the Allen County Division of Child Services (“ACDCS”) removed the children from the care of their Father and Mother because the parents were unable to provide the children with a clean, safe, and stable home.¹ The children had been residing on and off with relatives for approximately eight months. A detention hearing was held the same day, and the trial court found probable cause to believe M.H., A.H., and S.H. were children in need of services (“CHINS”). The children were placed with a maternal aunt and uncle, and the parents were ordered to participate in supervised visitation.

On February 13, 2003, the ACDCS filed a CHINS petition. Father admitted to the following allegations:

2. In January 2003, and for weeks prior to, [Father] did not have heat and hot water service in his home.
3. [M.H.] and [A.H.] have resided off and on with Sharon and Roger Bayes since June 2002.
4. [S.H.] has resided with Sharon and Roger Bayes since January 8, 2003, and off and on prior to that time.
* * *
6. From June 2002 to February 2003, [Father] was unable financially to visit his children on a regular basis while they were residing with Mr. and Mrs. Bayes.

¹ Mother’s parental rights to M.H., A.H., and S.H. were involuntarily terminated in separate proceedings.

7. [Father] has not provided financial support for his children since they have been residing with Mr. and Mrs. Bayes.
8. From June 2002 to February 2003, [Father] was unable to provide appropriate shelter and supervision for his children.
* * *
11. In January 2003, [Father] refused to work with SCAN and had been uncooperative with SOCAP.²
* * *
14. [Father] needs professional services to enable him to provide necessary care, shelter, and supervision of his children, services he will not or cannot obtain without the intervention of the court.

(App. at 243-44) (footnote added).

The trial court ordered Father to comply with its Parent Participation Plan in order to be reunited with his children. The plan required Father: (1) maintain clean, safe, and appropriate housing at all times; (2) provide the children with clean, appropriate clothing at all times; (3) submit to a psychological assessment and follow all recommendations; (4) participate in SCAN home-based services and successfully complete the program; (5) exercise reasonable visitation with the children; and (6) pay child support in the amount of \$45.00 per week to the Clerk of the Allen Superior Court. For the next two years, the parents participated in various services.

ACDCS recommended the parents be reunited with their children based on their “general compliance” with the Parent Participation Plan, even though the parents had continuing “difficulty in maintaining appropriate housing.” (State’s Ex. 9.) On January 12, 2004, the trial court approved the recommendation but did not immediately return the children because it was “contrary to the interests of the children to be placed with the

² Neither counsel explains what “SCAN” and “SOCAP” are.

parents at this time given the need to insure that safe suitable housing has been secured.”
(*Id.*)

The children were gradually brought back into their parents’ care between January 2005 and the end of July 2005 while the trial court maintained its wardship of the children. On September 22, 2005, after a permanency hearing the trial court issued an order directing the parents to retain physical custody of M.H., A.H. and S.H. and stating termination of the ACDCS wardship of the children was expected within six months.

On February 9, 2006, ACDCS was informed of suspected physical abuse against M.H. He had a mark on his wrist that appeared to have been made by a belt. M.H. told ACDCS caseworker Vicki Ratcliff that his mother had caused the mark on his wrist. Ratcliff saw a similar but less pronounced mark on S.H. Ratcliff also learned the family had received an eviction notice for the trailer where they were living.

As a result of her investigation and her continuing concerns about the parents’ financial situation and ability to provide food and other necessities for the children, Ratcliff placed the children back into protective custody. The trial court found continued placement of the children in the parents’ home contrary to their welfare. (App. at 282.) It directed ACDCS to place the children in licensed foster care.

On March 16, 2006, the trial court found Father was not in compliance with the Parental Participation Plan and allowed ACDCS to petition to terminate his parental rights to M.H., A.H., and S.H. On August 30, 2006, the trial court issued an order including a modified Parent Participation Plan. Father was again directed to: (1) maintain clean, safe, appropriate and independent housing at all times; (2) provide clean and

appropriate clothing for the children; (3) enroll in parenting classes at Caring About People, Inc., (“CAP”); and (4) exercise regular visitation with the children.

After a hearing in July 2007, the trial court terminated Father’s parental rights to M.H., S.H., and A.H.

DISCUSSION AND DECISION

Father asserts the involuntary termination of his parental rights to M.H., A.H., and S.H. is not supported by clear and convincing evidence. Specifically, Father claims ACDCS did not prove a reasonable probability the conditions resulting in the children’s removal and continued placement outside his care would not be remedied. He also claims ACDCS did not prove termination of his parental rights was in the children’s best interests.

When reviewing termination of parental rights we do not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

The trial court made specific findings. When a court enters specific findings of fact, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the juvenile court’s unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. A judgment is

clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To terminate a parent-child relationship, the State must prove:

- (A) [o]ne (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * *
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and,
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

1. Conditions Will Not Be Remedied

Father argues ACDCS did not prove the conditions resulting in the children's removal and continued placement outside the home will not be remedied or that continuation of the parent-child relationship poses a threat to the children's well being. Specifically, Father asserts he complied with services and had obtained housing for himself and the children by the time of the termination hearing. Father further claims that when the children were removed from his care the second time, it was due to the actions of Mother, which were "wholly unrelated to anything [he] did or failed to do to the children." (Appellant's Br. at 7.)

Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, so the trial court need find by clear and convincing evidence only one of the two requirements of subsection (B). *See L.S.*, 717 N.E.2d at 209. Accordingly, we first review whether clear and convincing evidence supports the finding the conditions resulting in the children's removal and continued placement outside the home of the parents will not be remedied.

When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Courts may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to

provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly consider as evidence of whether conditions will be remedied the services offered a parent and the parent's response to those services. *Id.* ACDCS was not obliged to rule out all possibilities of change; it needed establish only a reasonable probability a parent's behavior would not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In terminating Father's parental rights to the children, the trial court made the following pertinent findings:³

Evidence presented at the Termination Hearing . . . revealed that . . . despite the receipt of numerous services . . . designed to assist the father in providing a safe, stable home for the [children], the father failed to participate in and/or benefit from said services. Additionally, the evidence revealed that the father's inability to provide the [children] with a safe, stable environment which condition existed at the initiation of the CHINS proceedings . . . continued to exist at the time of the termination hearing. At trial, the SCAN case manager testified that after the initial removal of the children from the parents' home in 2003, the children were returned to the parents' home in late 2005, or early 2006, but that during the case manager's home visits, the children were consistently dirty, the family consistently lacked a sufficient amount of food in the home[,] and the children were often inappropriately dressed for the weather conditions and for their size. This failure to benefit from services ultimately led to the removal of the children from the parents' home for the second time in February of 2006.

Further, [ACDCS] made a referral to SCAN for visitation between the father and his children, however, at trial, the SCAN case manager testified that the father's visitations were put on hold three times during the CHINS proceedings because he was missing two or more consecutive visits at a

³ The trial court entered separate judgments under different cause numbers in terminating Father's parental rights to each of the children. However, other than the children's names, the language in each judgment is identical.

time, and, further evidence revealed that from February of 2007, to the dates of the termination hearing, the father only visited the children three (3) times.

Additionally, [ACDCS] made a referral to Caring About People for a Family Functioning Assessment. One of the recommendations from the assessment was that the father should participate in parenting classes[,] which parenting classes would have assisted the father with learning and implementing appropriate parenting skills. However, the father failed to complete said classes[,] informing the case manager that he did not feel that he needed parenting classes. Additionally, evidence presented at trial revealed that the father was receiving parenting instruction from SCAN, but at trial, the SCAN case manager testified that the father was often falling asleep during her sessions with him and that he did not appear to be retaining the information that she was providing to him.

Additionally, [ACDCS] made a referral for a psychiatric evaluation for the father, which evaluation would have assisted [ACDCS] and the Court in determining appropriate services to assist the father in providing a safe, stable home for the [children], however, the father failed to complete said evaluation.

Evidence presented at the hearing on the Petition for Termination . . . revealed that at the time of said hearing, the father was employed and had obtained housing. However, evidence presented at said hearing revealed that the father has demonstrated a history of being unable to maintain employment and to maintain safe, stable and appropriate housing.

In light of the father's refusal to participate in or benefit from services designed to remedy the reasons for removal of the [children] from the father's home, the Court finds that the [ACDCS] has proven by clear and convincing evidence that the conditions that existed at the time of the initiation of the CHINS proceedings in the underlying CHINS cause, continued to exist at the time of the Termination Hearing

(App. at 11-13, 16-18, 21-23.)

There is ample evidence in the record to support the findings. By the time of the termination hearing, Father had not completed the court-ordered services necessary for reunification. He had not achieved stable independent housing but was living with his

sister-in-law, who was paying the utility bills and buying groceries for him. This home was unsuitable for the children. It was a three-bedroom home, with Father occupying one bedroom and the sister-in-law using the second. Twenty-two pet birds were kept in the third bedroom. Father had not submitted to a psychiatric evaluation, had not participated in parenting classes, was not current with his child support obligation, and was not regularly visiting the children. Father started a new job the week before the hearing, and when asked whether he believed he would be able to provide food for his children should they be returned to his care, he responded, “I don’t know, I haven’t got the first check.” (Tr. at 36.)

ACDCS case worker Vicki Ratcliff testified that throughout the CHINS proceedings, ACDCS had concerns about Father’s housing instability. She testified her recommendation to terminate Father’s parental rights was based on several other factors as well, including Father’s recent employment instability, lack of parenting skills, and the fact Father “does not seem . . . [to have] benefited from [the] services provided . . . to him through SCAN throughout the years” (*Id.* at 87.) SCAN caseworker Shanna Anderson provided home-based services and supervised visitation for Father after January 2006. She testified she had seen no improvement in Father’s ability to parent the children. (*Id.* at 164.)

“[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change.” *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind.

Ct. App. 2007), *trans. denied*. The children were originally removed from Father's care in February 2003 because he could not provide the children a safe, clean, and stable home. We acknowledge the children's removal in February 2006 was spurred by abuse suspicions surrounding Mother. But approximately one and a half years passed after the children's second removal and Father, despite a wealth of services offered him, did not complete most of the court-ordered services and had not acquired a clean, safe, and stable home for himself and the children.

Based on the foregoing, we cannot say the trial court committed clear error in determining there is a reasonable probability the conditions resulting in the children's removal from the care and custody of Father will not be remedied.⁴ M.H., A.H., and S.H. need not wait indefinitely until Father is willing and able to obtain, and benefit from, the help he needs. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (court will not put the children "on a shelf" until their mother is capable of caring for them).

2. Best Interests

Next, Father asserts ACDCS failed to prove termination of his parental rights is in the children's best interests.

In determining what is in the best interests of the child, the trial court must look beyond the factors identified by the Department of Child Services to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, it must subordinate the interests of the parent to those

⁴ As that finding is supported by clear and convincing evidence, we need not address whether ACDCS proved continuation of the parent-child relationship poses a threat to the children's well being.

of the children. *Id.* The recommendations of a caseworker and guardian ad litem that parental rights be terminated support a finding that termination is in the child's best interest. *Id.*

In concluding termination of Father's parental rights was in the children's best interests, the trial court made the following findings:

Termination of parental rights is in the best interests of the [children] . . . in that the father has shown over the course of the related CHINS cause, and in the fact of a treatment plan or plans, and numerous specific services made available and/or provided, that said parent continues to be unable, refuse, or neglect to provide for the basic necessities of a suitable home for the raising of the [children].

Evidence presented at trial revealed that that the father has had extensive, long-term involvement with the [ACDCS] dating back to 1995 when the father and his first wife were involved with the [ACDCS] for the same or similar issues. Additionally, evidence presented at trial revealed that during the father's current involvement, the [ACDCS] made numerous referrals for services for the father, but that the father has failed and refused to accept, receive or benefit from services provided. Specifically, the father has not benefited from services provided by SCAN which were designed to assist him in remedying issues relating to a lack of stable housing, lack of stable income, the cleanliness of the home and cleanliness of the children and in remedying the lice problem that the children had been experiencing.

(*E.g.*, App. at 304.)

These findings are supported by the evidence. Guardian ad litem Beth Webber and case worker Ratcliff both recommended Father's parental rights be terminated. Webber testified:

I do believe that it's in the best interests of the children that parental rights be terminated. . . . I base [my recommendation] on the long history that we've had on this case. The difficulty has been that in my opinion the service providers and case manager and quite frankly, myself, have all worked really hard at trying to beef up the family in the home so that the kids could be reunited and hopefully remain there. We added additional

services when we sa[w] problems happening [W]e worked to try to come up with a better plan. . . . [T]he problem has been that the parents have just not been able to benefit from the services [A]nd we still haven't been able to make enough progress or change to be able to return the kids and keep them in the home with the parents and so it's just this continual cycle of the parents not being able to learn what they need to learn to maintain stability to be able to parent these children.

(Tr. at 184-85.) These sentiments were echoed in Ratcliff's testimony: "[T]he [ACDCS] felt it was in the children's best interests to recommend the initiation of the termination of parental rights . . . [in order] to have some kind of closure for these children." (*Id.* at 85.)

Based on the totality of the evidence, we conclude the termination was in the children's best interests and is supported by clear and convincing evidence. *See In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding testimony of court appointed special advocate and family case manager, coupled with evidence the conditions resulting in continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in the child's best interest), *trans. denied*; *see also McBride*, 798 N.E.2d at 203 (testimony of guardian ad litem that child needs permanency supports a finding that termination is in the child's best interests).

CONCLUSION

Father did not comply with or benefit from a number of services offered during and after the CHINS proceedings. At the time of the termination hearing Father had not

obtained a clean, safe, and appropriate home for himself and his children. The judgment terminating Father's parental rights is supported by clear and convincing evidence. We accordingly affirm.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.